

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

DONTONIO R. KING

Plaintiff,

3:21-cv-01306-CL

v.

ORDER

DEPUTY KING,

Respondent.

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mark Clarke. ECF No. 72. Judge Clarke recommends that Plaintiff’s Motion for Summary Judgment, ECF No 53, be granted. Previously, the Court adopted Judge Clarke’s F&R denying Defendant’s Motion for Summary Judgement. ECF Nos. 44, 46. In recommending denial of Defendant’s motion, Judge Clarke determined that a material fact remained in question whether Plaintiff had exhausted his administrative remedies under 42 U.S.C § 1997e(a). ECF No. 44 at 8.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of

the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). The Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, Defendant filed Objections to the F&R. ECF No. 75. Plaintiff did not file a response to those Objections. The Court has reviewed the F&R, the Objections, and the Record, and Judge Clarke’s F&R is NOT ADOPTED. A disputed material fact exists whether Plaintiff exhausted his remedies, precluding summary judgment. The parties are ORDERED to contact Judge Aiken’s Chambers within 30 days to schedule a Telephonic Status Conference to advise the Court: (1) whether there is full consent to a trial adjudicated by magistrate judge; (2) whether the case should be reassigned to Judge Ann Aiken; and (3) to discuss next steps.

It is so ORDERED and DATED this 22nd day of February 2024.

/s/Ann Aiken
ANN AIKEN
United States District Judge